

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: CACE18-016496

KM1 and KM2, minor children and
their adoptive parents and guardians,
TM and MM,

Plaintiffs,

v.

CHILDNET, INC., NATIONAL
YOUTH ADVOCATE PROGRAMS,
INC. and KIDS IN DISTRESS, INC.

Defendants.

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**PLAINTIFFS' FIRST AMENDMENT TO PLAINTIFFS' FIRST AMENDED
COMPLAINT AS TO DEFENDANT KIDS IN DISTRESS, INC.**

COME NOW, the minor Plaintiffs, KM1 and KM2 and their adoptive parents and guardians, TM and MM, by and through undersigned counsel, and pursuant to the Agreed Order on Defendant, Kids In Distress, Inc.'s Motion to Dismiss Count XIII of Plaintiff's First Amended Complaint, entered by the Court on June 24, 2019, Plaintiffs hereby file their First Amendment to Plaintiffs' First Amended Complaint as to Defendant Kids In Distress and in support thereof, states as follows:

COUNT XII
**PLAINTIFFS, TM AND MM'S NEGLIGENCE CLAIM AGAINST
DEFENDANT, KIDS IN DISTRESS, INC.**

156. Plaintiffs reallege paragraphs 1-105 as if fully set forth herein.

157. At all times material hereto, KIDS repeatedly ignored risks and concerns for KM1's health and welfare raised by the foster parents in the Williams and Ebanks foster home and by the adoptive parents, TM and MM.

158. Specifically, KIDS ignored clear signs that KM1 was sexually abused and completely failed to provide the necessary therapeutic services or request the proper assessments including psychological and psychosexual assessments, to determine the level of therapy KM1 needed to ensure that KM1 was safe from further sexual abuse.

159. Defendant, KIDS, and its agents and/or employees, owed the following common law, statutory, and contractual duties to Plaintiffs, TM and MM:

- a. To obtain all history pertaining to KM1 upon receiving a referral for services;
- b. To listen or obtain all history provided by TM and MM and to obtain all information from NYAP pertaining to KM1's history to ensure that KM1 received all the necessary support to ensure his safety, health, and stability;
- c. To review all of its treatment records and the records of other treatment providers as to KM1;
- d. Upon providing adoptive services, obtain all the history which could be obtained or was available to them when KIDS previously provided therapeutic care to KM1, while in foster care;
- e. To review and be aware of the facts contained within KM1's foster care records and Child Resource Record and to address any inappropriate behaviors of KM1 identified therein;

- f. To recommend appropriate therapy and/or treatment of KM1's sexualized behaviors.
- g. To contact the Florida Abuse Hotline upon obtaining knowledge that KM1 had engaged in child-on-child sexualized behavior so that such behavior could be appropriately investigated, assessed and treated; and
- h. To ensure that when KIDS' employees had a reasonable suspicion that child-on-child sexual abuse incident occurs, to call the abuse hotline, immediately recommend a safety plan, and provide the appropriate services and evaluations to provide adequate treatment for the children KM1 and KM2;

160. Defendant, KIDS, breached the above duties in the following ways:

- a. KIDS failed to obtain the necessary background information prior to providing therapeutic services in that they failed to:
 - i. To address the concerns that TM and MM consistently reported pertaining to KM1's behaviors;
 - ii. Review KM1's therapy file from when KIDS provided services in the Williams foster home;
 - iii. Review information readily available to NYAP, the agency who referred KM to KIDS for services;
 - iv. Review and be aware of the facts contained within KM1's foster care file and Child Resource record and to address any inappropriate behaviors of KM1 therein;

- b. KIDS was aware that KM1 was experiencing sexualized and other behaviors that were indicators that he may have been sexually abused, yet they never referred him for a psychosexual assessment or provided him with any specialized counseling to address those issues, nor did they seek a psychological evaluation of KM1;
- c. Despite having knowledge that KM1 had symptoms of being a victim of sexual abuse:
 - i. KIDS failed to call the Florida Abuse Hotline so that an investigation could be initiated, as required pursuant to Florida law;
 - ii. KIDS failed to recommend any sort of safety plan for KM1;
 - iii. KIDS failed to recommend that KM1 receive counseling services that were specialized to deal with suspected sexual abuse of KM1;
- d. KIDS failed to call the abuse hotline upon obtaining knowledge that KM1 had been a victim of sexual abuse so that such behavior could be appropriately investigated, assessed, and treated; and
- e. Failed to make appropriate recommendations to TM and MM otherwise take appropriate therapeutic action concerning the adoption of KM1.

161. As a result and proximate cause of the above breaches, Plaintiffs, TM and MM have suffered injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical and nursing care and treatment, and aggravation of any previously existing condition. The losses are either permanent or continuing and Plaintiffs

will suffer the losses in the future. Plaintiffs, TM and MM, have incurred the expense of necessary treatment due to the injuries of KM1 and KM2 and will continue to incur expenses of necessary treatment for KM1 and KM2 either until they reach the age of majority or for the duration of their lifetime if KM1 and/or KM2 are disabled and unable to support themselves from gainful employment as adults as a result of the negligence of the Defendant. Further, as a result and proximate cause of the breaches of Defendant, TM and MM have suffered mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical care and treatment. In addition, MM experienced loss of earnings and loss of ability to earn money. Such losses are either permanent or continuing and Plaintiffs, TM and MM will suffer the losses in the future.

WHEREFORE, Plaintiff, TM and KM demands judgment for damages against Defendant, KIDS IN DISTRESS, INC.

COUNT XIII
PLAINTIFFS KM1, KM2, TM, AND MM'S BREACH OF FIDUCIARY DUTY CLAIMS
AS TO DEFENDANT, KIDS IN DISTRESS, INC.

162. Plaintiffs reallege paragraphs 1-105, as if fully set forth herein.
163. KIDS accepted responsibility to provide the Plaintiffs with mental health and therapeutic services and to provide therapy to KM1 and adoption related services and therapy to all of the Plaintiffs.
164. A therapist-patient relationship was, accordingly, created between KIDS and each of the Plaintiffs.
165. The Plaintiffs reposed trust and confidence in KIDS with respect to the prospective adoption of KM1.

166. Pursuant to its statutory, contractual, licensure, and Medicaid provider responsibilities and obligations to each of the Plaintiffs as part of the therapist-patient relationship that had been created, there existed a relationship of trust and confidence between KIDS and the parties whereby KIDS owed each of the Plaintiffs a fiduciary duty to act with good faith and honesty towards the Plaintiffs, to act in the best interests of Plaintiffs and to disclose and not conceal important, material information to Plaintiffs who were KIDS' patients.

167. As a fiduciary, KIDS also had a duty to disclose that its therapists did not have the skill and expertise to provide appropriate assessment and adoptive counseling to Plaintiffs including as to whether KM1 was sexually reactive.

168. KIDS breached its fiduciary duties to KM1, KM2, MM, and TM.

169. KIDS breached its fiduciary duties by virtue of its failure to disclose that its therapists did not have the skill and expertise to provide appropriate assessment and adoptive counseling to Plaintiffs as to KM1's sexually reactive condition, by failing to refer KM1 for a psychosexual and/or psychological evaluation when it recognized that it did not have the skill to provide appropriate assessment or counseling, by its failure to advise TM and MM of KM1's extensive history of behaviors that were sexualized, by failing to provide adequate therapeutic treatment, by failing to make an appropriate recommendation as whether TM and MM should adopt KM1 under the circumstances, which resulted in the adoption of KM1 as part of their family and the subsequent child-on-child sexual abuse incident(s) in the home and the destabilization of the adoptive placement.

170. As a result and proximate cause of the above breaches of fiduciary duties, Plaintiffs, TM, MM, KM1 and KM2, have suffered injury and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical and

nursing care and treatment, and aggravation of any previously existing condition. The losses are either permanent or continuing and Plaintiffs will suffer the losses in the future. Plaintiffs, TM and MM, have incurred the expense of necessary treatment due to the injuries of KM1 and KM2 and will continue to incur expenses of necessary treatment for KM1 and KM2 either until they reach the age of majority or for the duration of their lifetime if KM1 and/or KM2 are disabled and unable to support themselves from gainful employment as adults as a result of the negligence of the Defendant. Further, as a result and proximate cause of the breaches of Defendant, TM and MM have suffered mental anguish, loss of capacity for the enjoyment of life, expense incurred for medical care and treatment. In addition, MM experienced loss of earnings and loss of ability to earn money. Such losses are either permanent or continuing and Plaintiffs, TM and MM will suffer the losses in the future.

WHEREFORE. Plaintiffs KM1, KM2, TM, and MM demand judgment for damages against Defendant KIDS IN DISTRESS, INC.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues so triable. Dated this 24th day of June, 2019.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 24th day of June, 2019, a true and correct copy of the above and foregoing was served via the E-Portal on:

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